

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DONALD LYLE STRATTON,

Plaintiff,

V.

M. KARR,

Defendant.

CASE NO. C12-5499 BHS-JRC

ORDER DENYING PLAINTIFF'S MOTIONS

The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States

Magistrate Judge, J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. § 636
(b) (1) (A) and (B), and local Magistrate Judge Rules MJR3 and MJR4.

Plaintiff asks that the Court grant him in forma pauperis status for the purpose of obtaining free service of process on defendant Karr (ECF No. 7). Plaintiff states that the payment of filing fees was waived in state court by the Honorable Judge Culpepper (ECF No. 7, page 2). Plaintiff also asks that the Court order the parties to file a status report (ECF No. 6). Finally, plaintiff has filed a second amended complaint without leave of Court (ECF No. 11).

Defendant Karr removed this action from state court and paid the fee for removal (ECF No. 1). Defendant Karr also has filed a motion to dismiss that does not raise or argue lack of in personam jurisdiction (ECF No. 4). Thus, defendant Karr has waived service of process by filing

1 a motion to dismiss. The filing of a motion to dismiss without raising arguments pertaining to
2 service of process precludes a party from arguing lack of in personam jurisdiction. *See generally,*
3 *Dawe v. Corrections USA*, 2010 WL 1689107 (E.D. Cal. 2010). There is no need to grant
4 plaintiff's motion to proceed in forma pauperis as service of process is not at issue. Further, the
5 federal court takes the case on removal exactly as the case stood in state court. *Sun Forest Corp.*
6 *v. Shvili*, 152 F. Supp. 2d 367, 387 (S.D.N.Y. 2001) (after removal, district court takes removed
7 action in posture in which it existed in state court at time of removal and must give effect to all
8 actions and procedures accomplished in state court before removal). Thus, plaintiff has in forma
9 pauperis status in this Court. Plaintiff's motion for in forma pauperis status is DENIED as moot.

10 Plaintiff asks that the Court order that the parties file a status report. If this action
11 survives defendant's motion to dismiss and defendants file an answer, the Court will issue a
12 scheduling order. The case is not subject to initial disclosure requirements. *See* Fed. R. Civ. P. 26
13 (a) (1) (B) (iv). Plaintiff's motion asking that the Court order the parties to file a status report is
14 DENIED.

15 Plaintiff has filed a second amended complaint. Fed. R. Civ. P. 15 (a) allows for the filing
16 of one amended complaint without leave of Court. Plaintiff filed his first amended complaint
17 while the action was in state court (ECF No. 1). Plaintiff would need to file a motion and explain
18 to the Court why a second amended complaint has been filed and what changes he has made to
19 the action. The second amended complaint (ECF No. 11) will not be considered by the Court, but
20 will remain in the file.

21 Dated this 20th day of August, 2012.

22 
23

24 J. Richard Creatura
United States Magistrate Judge